

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

RONALD FLEMING,)
Plaintiff)
v.) **C.A. No. 02-164 ERIE**
SUPERINTENDENT WOLFE, et al.,) **District Judge McLaughlin**
Defendants.) **Magistrate Judge Baxter**

ORDER

AND NOW, this 31st day of August, 2005;

IT IS HEREBY ORDERED that Defendants' motion for summary judgment [Document # 150] is DISMISSED, without prejudice, for failure to comply with Fed.R.Civ.P. Rule 56, and for positing an argument that has already been rejected by the District Judge.

IT IS FURTHER ORDERED that Plaintiff's "Motion Compelling this Civil Action to Proceed, and for Discovery" [Document # 153], is granted in part and denied in part, as follows:

1. the motion is GRANTED to the extent Plaintiff has requested production of any videotape in Defendants' possession that would show any of the incidents in which Plaintiff claims he was subjected to an excessive use of force. Defendants are hereby ORDERED to provide a copy of any such videotape to Plaintiff within twenty (20) days of the date of this Order and to report to this Court in writing as to whether any such videotape is found and produced in accordance with this Order; and
2. The motion is DENIED in all other respects based on Plaintiff's verbal acknowledgment to this Court that he has received everything else he has requested from Defendants..

IT IS FURTHER ORDERED that the parties are allowed ten (10) days from this date to appeal this order to a district judge pursuant to Local Rule 72.1.3 B. Failure to appeal within ten (10) days may constitute waiver of the right to appeal.

S/Susan Paradise Baxter
SUSAN PARADISE BAXTER
Chief U.S. Magistrate Judge